

1984 Ky. Op. Atty. Gen. 2-432, Ky. OAG 84-381, 1984 WL 185931 (Ky.A.G.)

Office of the Attorney General
Commonwealth of Kentucky

OAG 84-381

December 17, 1984

Mr. William Owens
Fleming County Judge Executive
Courthouse
Flemingsburg, Kentucky 41041

Dear Judge Owens:

The Fleming County Fiscal Court has received a letter from State Local Finance Officer, Robert Purdom, and State Local Finance Supervisor, Al Howell, informing them that they must set the county judge executive's salary at a rate that the county clerk or the sheriff of your county receives, whichever is greater, up to the maximum.

Under the rubber dollar concept, in connection with the consumer price index, the maximum salary payable to local constitutional officers for 1984 is \$30,605.

Your question is whether or not, under [KRS 67.705](#), the county judge executive can refuse raises as proposed, and must he be paid any back pay where he is not paid the amount required by statute.

Your personal desire is that your salary will remain what it was previously. In essence, you do not want the minimum amount prescribed by statute.

While [KRS 67.705\(2\)](#) requires that the salary of the county judge executive be set by the fiscal court, the statute (subsection (3)) imposes the statewide policy that, except in urban county governments, the minimum annual compensation paid to the county judge executive shall be the greater of a sum not less than sixty percent (60%) of the maximum compensation certified under [KRS 64.527](#) (1984: \$18,363), or not less than the annual compensation of the sheriff or county clerk or jailer in the county.

Mr. Purdom and Mr. Howell, in their letter, indicate that the Fleming County Clerk is receiving the maximum salary allowed by statute for 1984, which is \$30,605. That being the case, [KRS 67.705](#) mandates that for 1984 you be paid the salary of \$30,605. The annual minimum salary payable to the county judge executive is mandatory, since the statute uses the term "shall". The word "shall", except where the context requires otherwise (which is not the case in [KRS 67.705](#)), appearing in a statute means that the provision of minimum salary is mandatory. [KRS 446.010\(29\)](#). The old Court of Appeals, in [Department of Revenue v. Oldham County, Ky., 415 S.W.2d 386 \(1967\)](#), observed that the principle of construction, relating to the term "shall", was recognized

by the courts many years before it became a part of the statutory law.

CONCLUSION

It is our opinion that in your factual situation, [KRS 67.705](#) mandates that the fiscal court provide, and you receive, as your salary for 1984 the sum of \$30,605, which minimum for you also happens to be the maximum payable under the consumer price index cases and statute. Thus, unfortunately, you cannot refuse to receive the salary mandated by law for you. Any back pay necessary to bring you finally up to the amount of \$30,605 for 1984 must be forthcoming, as pointed out in Mr. Purdom's and Mr. Howell's letter. We assume, of course, that the payment of \$30,605 to you for 1984 will not exceed six percent (6%) of the county's total annual general fund receipts, including federal revenue sharing moneys. [KRS 67.705\(3\)](#). The same principle would apply to your 1983 salary. Thus, if the county clerk received the maximum under the rubber dollar cases for that year, your salary would have to be the same.

Sincerely,

*2 David L. Armstrong
Attorney General

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